

APPEAL NO. 041318
FILED JULY 28, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 11, 2004. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the first, second, and third quarters. The appellant (self-insured) appeals these determinations on sufficiency of the evidence grounds and asserts that the claimant is not entitled to third quarter SIBs because the Application for [SIBs] (TWCC-52) was not signed by the claimant. The claimant did not file a response.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is entitled to first, second, and third quarter SIBs. Section 408.142 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) establish the requirements for entitlement to SIBs. At issue was whether the claimant had no ability to work during the qualifying period, thereby satisfying the good faith requirements of Section 408.142(a)(4) and Rule 130.102(d)(4). It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ) The hearing officer found that the claimant provided a narrative report from his treating doctor which specifically explains how the injury causes a total inability to work and no other records show that the claimant was able to return to work. In view of the applicable law and the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

As stated above the carrier requests reversal of the hearing officer's decision with regard to third quarter SIBs because the TWCC-52 for this quarter was not signed by the claimant. We note that this issue was not certified in the benefit review conference report and the carrier failed to request that the issue be added in accordance with Rule 142.7(e), regarding additional disputes by permission of the hearing officer. Because the issue was not properly before the hearing officer and was not resolved through findings of fact and conclusions of law, we decline to address it further.

The decision and order of the hearing officer is affirmed.

The true corporate name of the insurance carrier is **a self-insured governmental entity through the TEXAS ASSOCIATION OF COUNTIES WORKERS' COMPENSATION SELF-INSURANCE FUND** and the name and address of its registered agent for service of process is

**EXECUTIVE DIRECTOR
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Edward Vilano
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Thomas A. Knapp
Appeals Judge